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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,652	07/13/2001	Hiroshi Isono	110087	8225

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EXAMINER

BURCH, MELODY M

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application No.	Applicant(s)
	09/903,652	ISONO, HIROSHI
	Examiner Melody M. Burch	Art Unit 3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 11 December 2002.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 5,8,9,12-14 and 18-29 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,6,7,10,11,16 and 17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 5,8,9,12-14 and 18-29 are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of Species I, Figure I in Paper No. 7 is acknowledged.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the brake claimed in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

3. The disclosure is objected to because of the following informalities:

- In line 3 of paragraph [0101] "mater" should be changed to --master--;
- On pg. 49 line 3 "50" should be changed to --60--;
- In line 4 from the bottom of paragraph [0106] "86," should be deleted since "86" represents the linear valve;
- In line 5 from the bottom of pg. 57 "valve90" should be changed to --valve 90--.

Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claimed subject matter includes "a communication control valve device" as claimed in claim 6.

### ***Claim Objections***

5. Claims 1-4, 6, 7, 10, 11, and 15-17 are objected to because of the following informalities: In claim 1 a period should follow the word "source". Appropriate correction is required. The remaining claims are objected to due to their dependency from claim 1.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2-4, 6, 7, 10, 11, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with 112 issues including but not limited to:

Re: claim 2. The phrases "an including" and "and having" in lines 4 and 5, respectively, are indefinite. It is unclear to the Examiner whether the "including" and "having" refer to the braking system or to the hydraulic cylinder.

Re: claim 3. Claim 3 recites the limitation "the pressurized" in line 4 and "the

pressurized fluid" in line 5. There is insufficient antecedent basis for the limitations in the claim.

Re: claim 4. Claim 4 recites the limitation "the pressurized fluid" in lines 4 and 6. There is insufficient antecedent basis for the limitations in the claim.

Re: claim 10. Claim 10 recites the limitation "the fluid" in second line from the bottom. There is insufficient antecedent basis for the limitation in the claim.

Re: claim 11. Claim 11 recites the limitation "the pressurizing working fluid" in line 3. There is insufficient antecedent basis for the limitation in the claim.

Claims 6, 7, and 17 are indefinite due to their dependency from claim 2.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 1-3, 6, 7, 10, 11, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4838619 to Ocvirk.

Re: claims 1, 10, 11, 15, and 16. Ocvirk shows in figure 1 a braking system comprising: a power-operated hydraulic pressure source 34 operable to deliver a pressurized working fluid; a brake shown in the area of element HR including a hydraulically operated brake cylinder 20, and a flow rate changing device 36,8,9,15 disposed between the power-operated hydraulic pressure source and the brake cylinder

and operable to change a rate of flow of the pressurized working fluid into the brake cylinder, which rate corresponds to a given rate at which the pressurized working fluid is delivered from the power-operated hydraulic pressure source.

Re: claims 2, 6, 7 and 17. Ocvirk shows in figure 1 the system further comprising a hydraulic cylinder 1 disposed between the power operated hydraulic pressure source and the brake cylinder and including a housing as shown and a pressurizing piston 6 fluid tightly and slidably fitted in the housing and having two pressure receiving surface areas shown on either side of element 6 which are different from each other and which respectively partially define a front pressurizing chamber 4 and a rear pressure chamber 5 on front and rear sides of the pressurizing piston, the hydraulic cylinder being operable to supply the brake cylinder with the pressurized working fluid delivered from the front pressurizing chamber as the pressurizing piston is advanced, and wherein the flow rate changing device includes a switching device 8,9 having a first state in which the pressurized working fluid is delivered from the power operated hydraulic pressure source to one of the front pressurizing chamber and the rear pressure chamber which has a larger one of the two pressure receiving surface areas and a second state in which the pressurized working fluid is delivered from the power operated hydraulic pressure source to the other of the front pressurizing chamber and the rear pressure chamber, Ocvirk shows a manually operable brake operating member 3.

Re: claim 3. Ocvirk shows in figure 1 the limitation wherein the flow rate changing device further includes a discharge flow inhibiting device or unnumbered seal surrounding element 6 operable to inhibit a discharge flow of the pressurized from the

rear pressure chamber while the pressurized fluid is delivered from the power operated hydraulic pressure source to the front pressurizing chamber under the control of the switching device.

***Allowable Subject Matter***

10. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Ocvirk fails to show the limitation of a check valve disposed in parallel connection with the discharge flow inhibiting device.

***Double Patenting***

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/712124. Although the conflicting claims are not identical, they are not patentably distinct from each other because In re Goodman, 29 USPQ 2d 2010

(Fed. Cir. 1993), the court held that for the purposes of double patenting a later genus (broad) claim is not patentable over an earlier species (narrow).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents: 5531509 to Kellner et al., 5031968 to Takata, 5141296 to Arikawa, 4869560 to Nishii, 5249853 to Reinartz et al., 5350225 to Steiner et al., 6089676 to Nishii et al., 4832418 to Mattusch, 6053582 to Ganzel, 4708404 to Seibert et al., 4657315 to Belart, and 4653813 to Burgdorf teach similar braking systems including pressure control valves.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 703-306-4618. The examiner can normally be reached on Monday-Friday (7:30 AM-4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

mmbs 2/23/03  
mmb  
February 23, 2003

*M.C.G.*  
2-24-2003

MATTHEW C. GRAHAM  
PRIMARY EXAMINER  
GROUP 310